



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG-2017-0334]

RIN 1625-AA08

Special Local Regulation; Commencement Bay, Tacoma, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary special local regulation for certain waters of Commencement Bay for the 2017 World Water Ski Racing Championships.

This action is necessary to safeguard participants and spectators from the hazards associated with race events and to ensure public safety during the duration of the events on Commencement Bay near Tacoma, WA, during the 2017 World Water Ski Racing Championships on July 29, 31, and August 2, 2017. This special local regulation prohibits non-participant persons and vessels from entering, transiting through, anchoring in, or remaining within the race area and prohibits vessels from transiting at speeds that cause wake within the spectator area unless authorized by the Captain of the Port Puget Sound or a Designated Representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0334

using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Petty Officer Zachary Spence, Sector Puget Sound Waterways Management Branch, U.S. Coast Guard; telephone 206-217-6051, email [SectorPugetSoundWWM@uscg.mil](mailto:SectorPugetSoundWWM@uscg.mil)

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose, and Legal Basis**

On December 8, 2016, Overload Productions notified the Coast Guard that it intends on conducting a high speed water ski race on Commencement Bay. Approximately 40 motor boats and water skiers will be participating in the races and operating at high speeds with limited maneuverability, which poses a significant hazard to race participants and other boaters. In addition the event sponsors anticipate a potential small number of on-water spectators to be present during the races.

The purpose of this rulemaking is to ensure the safety of vessels and participants in the race as well as spectators and the maritime public. The rulemaking would accomplish this purpose by establishing two regulated areas before, during, and after the scheduled event, one for race participants, and one for spectators and the maritime public. Many factors amplify the

potential hazards of the race, including limited maneuverability of the race participants, commercial vessel traffic, and the number of local recreational and fishing vessels. The Coast Guard proposes this rulemaking under authority in 33 U.S.C. 1233.

### **III. Discussion of Proposed Rule**

This proposed rule would create a temporary special local regulation on certain waters of Commencement Bay in Tacoma, WA for the 2017 World Water Ski Racing Championships. This special local regulation would establish two separate regulated areas, a race area and a spectator area. Within the race area, all persons and vessels, except those persons and vessels participating in the high-speed water ski races, are prohibited from entering, transiting through, anchoring in, or remaining within. Within the spectator area, all vessels are prohibited from anchoring and are required to transit at the minimum speed necessary to maintain course, minimizing vessels wake, unless authorized by the Captain of the Port Puget Sound or a Designated Representative. The regulatory text we are proposing appears at the end of this document.

### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

#### **A. Regulatory Planning and Review**

E.O.s 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory Review”) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits including potential economic, environmental, public health and safety effects,

distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 (“Reducing Regulation and Controlling Regulatory Costs”), directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

The Office of Management and Budget (OMB) has not designated this proposed rule a significant regulatory action under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

As this proposed rule is not a significant regulatory action, this rule is exempt from the requirements of Executive Order 13771. See OMB’s Memorandum titled “Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled ‘Reducing Regulation and Controlling Regulatory Costs’” (February 2, 2017).

This regulatory action determination is based on the size, location, duration, and time-of-day of the Special Local Regulation. Vessel traffic would be able to safely transit around race area or through the spectator area which would only impact a small designated area of Commencement Bay for less than nine hours during the days of event. Moreover, the Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the regulated areas.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast

Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a special local regulation lasting for nine hours on each day the event occurs and would prohibit entry into the race area and restrict movement within the spectator area. Normally such actions are categorically excluded from further review under section 2.B.2, and figure 2-1, paragraph 34(h) of the Instruction. Paragraph 34(h) pertains to special local regulations issued in conjunction with a regatta or marine parade. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2-1 of the Commandant Instruction. A preliminary Record of Environmental Consideration (REC) supporting this determination is available in the docket where indicated under the ADDRESSES section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and

provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

### **List of Subjects in 33 CFR Part 100**

#### **Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

#### **PART 100-- SAFETY OF LIFE ON NAVIGABLE WATERS**

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233.

2. Add § 100.T13-0334 to read as follows:

§ 100.T13-0334 Special Local Regulation; Commencement Bay, Tacoma, WA

(a) Location. The special local regulations found in paragraph (c) apply in the following areas.

(1) Race Area. All waters of Commencement Bay encompassed within an imaginary line connecting the following coordinates: starting at point 1 in position 47° 18' 9.6" N, 122° 30' 23.6" W; thence northeast to Point 2 in position 47° 18' 15.2" N, 122° 30' 14.4" W; thence east to Point 3 in position 47° 18' 15.2" N, 122° 28' 46.7" W; thence south to Point 4 in position 47° 17' 20.1" N, 122° 28' 46.9" W; thence southwest to Point 5 in position 47° 17' 5.5" N, 122° 29' 6.4" W; thence northwest back to origin.

(2) Spectator Area. All waters of Commencement Bay encompassed within an imaginary line connecting the following points: starting at Point 1 in position 47° 18' 15.2" N, 122° 28' 46.7" W; thence east to Point 2 in position 47° 17' 20.1" N, 122° 28' 46.9" W; thence south to Point 3 in position 47° 17' 19.8" N, 122° 28' 38.1" W; thence west to Point 4 in position 47° 18' 15.5" N, 122° 28' 46.1" W; thence north back to origin.

(b) Definitions. For the purpose of this section the following definitions apply:

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Puget Sound (COTP) in the enforcement of the regulated areas identified in paragraph (a)(1) and (a)(2) of this section.

*Patrol Vessel* means any Coast Guard vessel, Coast Guard Auxiliary vessel, or other federal, state or local law enforcement vessel.

(c) Special Local Regulations. (1) All persons and vessels, except those persons and vessels participating in the high-speed water ski races, are prohibited from entering, transiting through, anchoring in, or remaining within the race area.

(2) All persons and vessels entering, exiting, or moving within the spectator area must operate at speeds, which will create a minimum wake, and will not exceed seven knots. The maximum speed may be reduced at the discretion of the Patrol Commander.

(3) A succession of sharp, short signals by whistle or horn from a Patrol Vessel will serve as a signal to stop. Vessels signaled must stop and comply with the orders of the Patrol Vessel. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) Persons and vessels desiring to enter, transit through, anchor in, remain within or transit in excess of wake speed within any of the regulated areas must contact the Captain of the Port Puget Sound by telephone at (206) 217-6002, or a designated representative via VHF-FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Puget Sound or a designated representative.

(d) Notice of Enforcement. The Coast Guard will provide notice of the enforcement of this Special Local Regulation by all appropriate means to ensure the widest dissemination among the public, as practicable; such means of notification may include but are not limited to, Broadcast Notice to Mariners, Local Notice to Mariners, and by on-scene designated representatives.

(e) Enforcement Period. This rule is effective from 9 a.m. to 6 p.m. on July 29, 31, and August 2, 2017, unless cancelled sooner by the Captain of the Port Puget Sound.

Dated: May 5, 2017

B.C. McPherson,

CAPT, U.S. Coast Guard,

Acting Commander, Thirteenth Coast Guard District.

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